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IN THE SUPREME COURT

STATE OF ARIZONA

PETITION TO AMEND RULE 2)	
AND RULE 28.2, ARIZONA RULES)	Supreme Court No. R-08-_____
OF CRIMINAL PROCEDURE)	
_____)	

Pursuant to Arizona Supreme Court Rule 28, David K. Byers, Director, Administrative Office of the Courts, respectfully petitions this Court to adopt the attached proposed amendment to Rule 2 of the Arizona Rules of Criminal Procedure, providing law enforcement agencies the ability to obtain a court order which would require an arrested person to submit to fingerprinting who has previously refused to do so; and the proposed amendment to Rule 28.2 of the Arizona Rules of Criminal Procedure, reflecting a new requirement for the retention and disposition of biological evidence.

I. Background and Purpose of the Proposed New Rules. Senate Bill 1412 was passed in the Second Regular Session of the Forty-eighth Legislature (2008). The bill's effective date is December 31, 2008.

SB 1412 added A.R.S. section 13-3890. This new statute provides the arresting agency the opportunity to obtain a court order upon an arrested person's refusal to submit to fingerprinting. SB 1412 also added A.R.S. section 13-4221 regarding the preservation of biological evidence by governmental entities, and the disposition of such evidence.

II. Contents of the Proposed New Rules. The proposed new rules are amendments to Rules 2 and 28.2 of the Arizona Rules of Criminal Procedure.

Rule 2 deals with the commencement of criminal proceedings. The proposed rule would add a new section 2.6 under Rule 2. Proposed Rule 2.6 would implement the opportunity of the arresting or custodial agency to file a petition with the court. The Petitioner would state under penalty of perjury that the arresting agency was required by law to obtain fingerprints, and that the arrested person refused to provide legible fingerprints. The court would then issue an order requiring that the person appear at a designated place and time for fingerprinting. The agency would provide the person with a copy of the court's order prior to or at the time of fingerprinting.

Rule 28.2(a) deals with the discretionary disposition of evidence by a prosecutor or law enforcement agency. The proposed rule change is that a brief phrase be added at the beginning of Rule 28.2(a) which would clarify that a prosecutor or law enforcement agency may dispose of evidence seized or acquired for use in a criminal proceeding, pursuant to the procedures established by law and Rule 28.2, “unless otherwise required by law”. The phrase “unless otherwise required by law” would incorporate the new requirements of A.R.S. section 13-4221 concerning preservation of biological evidence in certain cases.

III. Pre-petition Comments. Petitioner transmitted a draft of this petition and proposed rules on October 15, 2008, to the following individuals and entities: Committee on the Superior Court, Committee on Limited Jurisdiction Courts, Superior Court Administrators, Superior Court Clerks, Limited Jurisdiction Court Administrators Association, Arizona Prosecuting Attorneys’ Advisory Council (Ed Cook), Maricopa County Attorney (through Phil MacDonnell), Arizona Public Defenders Association (Dana Hlavac and James Haas), the Arizona Attorneys for Criminal Justice (James Belanger), the Arizona Association of Chiefs of Police (John Thomas), and the State Bar of Arizona (Robert Van Wyck). No comments regarding the draft petition and proposed rules have been received as of this time.

IV. Proposed Public Comment Period. Petitioner respectfully recommends a public comment period for the proposed rules ending May 20, 2009.

V. Effective Date of the Proposed New Rules. Petitioner requests expedited adoption of the proposed new rules under Rule 28(g) of the Rules of the Supreme Court. The underlying statutes become effective on December 31, 2008, and the rules should be implemented without awaiting the one year rule processing cycle. Petitioner respectfully requests that the proposed new rules be made effective on and after December 31, 2008.

RESPECTFULLY SUBMITTED this 3rd day of November, 2008.

By _____
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PROPOSED AMENDMENT TO RULE 2, ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 2. Commencement of Criminal Proceedings.

Rule 2.1. Misdemeanors. [No change.]

Rule 2.2. Felonies. [No change.]

Rule 2.3. Contents of complaint. [No change.]

Rule 2.4. Duty of magistrate upon filing of complaint. [No change.]

Rule 2.5. Alternative procedure for commencing misdemeanor actions triable in Superior Court. [No change.]

Rule 2.6. Refusal to be Fingerprinted. Upon petition of an arresting authority or custodial agency, submitted under penalty of perjury, stating that a person was arrested for an offense listed in ARS section 41-1750(C) and that the arrested person refused to provide fingerprints in a legible form, the court shall order that the person appear at a designated time and place for fingerprinting. The arresting authority or custodial agency shall provide to the person a copy of the court order prior to or at the time of fingerprinting.

PROPOSED AMENDMENT TO RULE 28.2, ARIZONA RULES OF CRIMINAL PROCEDURE

Rule 28.2, Disposition of evidence in the custody of the prosecutor or law enforcement agencies.

a. Discretionary disposition. Unless otherwise provided by law, ~~t~~The prosecutor or a law enforcement agency may, at any time, dispose of any item, or any part or portion thereof, seized or otherwise obtained for use in a criminal prosecution, in accordance with the procedures established by law and by this rule.

b. Mandatory disposition. [No change.]

c. Manner of disposition. [No change.]

d. Notice of disposal. [No change.]

e. Notice of Disposal. [No change.]

f. Stay of Disposal. [No change.]

g. Use of the record of disposal. [No change.]